

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

UNITED STATES OF AMERICA, *

v. * CASE NO. 2:06cr214-MEF-WC-1

DANIEL L. PLATT. *

MOTION TO SUPPRESS SUPPLEMENT

Comes now Daniel L. Platt by and through undersigned counsel and files this his supplement to his motion to suppress and in support thereof states the following:

1. Platt filed a timely motion to suppress which is pending. The court has not conducted a hearing. Platt has brought to counsel's attention another viable issue that should also be considered by this court. Counsel by separate motion has sought leave of court to file this supplement. This request was granted.

2. Platt contends in this supplement that law enforcement in seizing and searching his computer exceeded the authority granted in the search warrant. This will be explained to follow.

3. The application for search warrant (Exhibit A) number 13(d) addresses one technique to be used to search the electronic data in the computer. Specifically 13(d) states: "Scanning" storage areas to discover and possibly recover" **recently** deleted data." (Emphasis added) The search warrant mirrors the exact language of

the application. (Exhibit B)

4. The term “recently” is defined by Webster New Twentieth Century Dictionary Unabridged Second Edition as: *at a recent time; lately; not long since.*

5. Based on discovery in this case it appears that the government seized, and plans to use in its case, inculpatory evidence of deleted files that were not deleted in the recent past. The government should be made to provide the dates of deletion of all images and/or other matters perceived as child pornography to satisfy the Court that these images are not subject to suppression as exceeding the scope of the search warrant.

Respectfully submitted,

s/Susan G. James
SUSAN G. JAMES
Attorney at Law
600 South McDonough Street
Montgomery, Alabama 36104
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E-mail: sgjamesandassoc@aol.com
Bar No: JAM012

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Tommie Brown Hardwick
Assistant United States Attorney
P.O. Box 197
Montgomery, Alabama, 36101

s/Susan G. James
SUSAN G. JAMES
Attorney at Law
600 South McDonough Street
Montgomery, Alabama 36104
Phone: (334) 269-3330
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E-mail: sgjamesandassoc@aol.com
Bar No: JAM012

EXHIBIT A

State of Alabama Unified Judicial System	APPLICATION FOR SEARCH WARRANT	Case or Warrant Number
Form CR-1 Rev. 4/99		
IN THE _____ Circuit COURT OF _____ Elmore County, ALABAMA <small>(Circuit, District, or Municipal) (Name of Country or Municipality)</small>		
<input checked="" type="checkbox"/> STATE OF ALABAMA <input type="checkbox"/> MUNICIPALITY OF _____ v. Daniel L. Platt Defendant		
I, the undersigned, hereby make application for the issuance of a search warrant as I have probable cause to believe and do believe that the following personal property, to-wit: (Fully describe property) _____ SEE ATTACHMENT "A"		
_____ is located or concealed in or upon (Fully describe person, place, premises, and / or vehicle to be searched) the premises located at 16 Wildwood Drive, Deatsville, Alabama 36022, to include the residential dwelling, any outbuildings, and any computer or computer media		
and that the property (check appropriate ground(s):		
<input type="checkbox"/> was, or is expected to be, unlawfully obtained;		
<input type="checkbox"/> was, or is expected to be, used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama or political subdivision thereof, to-wit: _____		
<input type="checkbox"/> is, or is expected to be, in the possession of another with intent to use it as a means of committing a criminal offense, or is, or is expected to be, in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery:		
<input checked="" type="checkbox"/> Constitutes, or is expected to constitute, evidence of a criminal offense under the laws of the State of Alabama or a political subdivision thereof, to -wit: violation of Title 13A-12-192 of the Code of Alabama		
Applicant states that his (her) request is based upon the facts stated in the affidavit(s) attached hereto.		
<div style="display: flex; justify-content: space-between;"><div style="text-align: center;">3/28/2004 Date</div><div style="text-align: center;">ap. John Russell Applicant</div></div>		

ATTACHMENT "A"

PROPERTY TO BE SEIZED

1. **Tapes, cassettes, cartridges, streaming tape, commercial software and hardware, computer disks, disk drives, monitors, computer printers, modems, tape drives, disk application programs, data disks, system disk operating systems, magnetic media floppy disks, CD-ROMs, CD-RWs, CD-Rs, DVDs, hardware and software operating manuals, tape systems and hard drive and other computer related operation equipment, digital cameras, scanners in addition to computer photographs, Graphic Interchange formats and/or photographs, undeveloped photographic film, slides, or other visual depictions of such Graphic Interchange format equipment that may be or are used to depict child pornography, sexual activity with children or the distribution, possession or receipt of child pornography, child erotica or information pertaining to an interest in child pornography and the data within the aforesaid objects relating to said materials.**
2. **Correspondence pertaining to the possession, receipt or distribution of visual depictions of minors engaged in sexually explicit conduct.**
3. **Visual depictions of minors engaged in sexually explicit conduct in whatever form, including, but not limited to books, magazines, photographs, negatives, films or videocassettes containing such images.**
4. **Envelopes, letters, and other correspondence including, but not limited to, electronic mail, chat logs, and electronic messages that:**
 - a. **Offer to transmit through interstate or foreign commerce, including by United States mail or by computer, visual depictions of minors engaged in sexually explicit conduct;**
 - b. **Solicit minors to engage in sexually explicit conduct for the purposes of producing child pornography;**
 - c. **Identify persons transmitting any visual depiction of minors engaged in sexually explicit conduct.**
5. **Books, ledgers and records bearing on the production, reproduction, receipt, shipment, orders requests, trades, purchases or transactions of any kind involving the transmission of any visual depiction of minors engaged in sexually explicit conduct.**
6. **Address books, mailing lists, supplier lists, mailing address labels and any and all documents and records pertaining to the preparation, purchase and**

acquisition of names or lists of names to be used in connection with the purchase, sale, trade or transmission of any visual depiction of minors engaged in sexually explicit conduct.

- 7. Address books, names, lists of names and addresses of minors visually depicted while engaged in sexually explicit conduct.**
- 8. Diaries, notebooks, notes and other records reflecting personal contact and other activities with minors visually depicted while engaged in sexually explicit conduct.**
- 9. Materials and photographs depicting sexual conduct between adults and minors.**
- 10. Records evidencing occupancy or ownership of the premises known and described as including, but not limited to, utility and telephone bills, mail envelopes or addressed correspondence.**
- 11. Records or other items which evidence ownership or use of computer equipment found in the above residence, including but not limited to, sales receipts, bills for Internet access, handwritten notes and handwritten notes in computer manuals.**
- 12. Any and all records, documents, invoices and materials that concern any Internet accounts.**
- 13. Any and all items described in paragraphs 1-12 above that are stored in the form of magnetic or electronic coding on computer media, or media capable of being read by a computer, with the aid of computer related equipment, including floppy diskettes, CD-ROMs, CD-Rs, CD-RWs, DVDs, fixed hard drives or removable hard disks cartridges, software or memory in any form. The search procedure for electronic data contained in computer operating software or memory devices, where performed on site or in a laboratory, or other controlled environment, may include the following techniques:**
 - a. The seizure of any computer or computer related equipment or data, including floppy diskettes, CD-ROMs, CD-Rs, CD-RWs, DVDs, fixed hard drives or removable hard disk cartridges, software or memory in any form containing material described above, and the removal thereof from the PREMISES for analysis by authorized personnel;**
 - b. Surveying various file "directories" and the individual files they contain (analogous to looking at the outside of a file cabinet for the markings it contains and opening a drawer believed to contain pertinent files);**
 - c. "Opening" or cursorily reading the first few pages of such files in order to determine their precise contents;**

- d. **"Scanning" storage areas to discover and possibly recover recently deleted data;**
- e. **"Scanning storage areas for deliberately hidden files; or**
- f. **Performing keyword searches through all electronic storage areas to determine whether occurrences of language contained in such storage areas exist that are intimately related to the subject matter of the investigation. Keywords include words relating to pornography, sex, genitalia, intercourse and topics relating to teen and pre-teen activities.**

EXHIBIT B

COPY

State of Alabama Unified Judicial System Form CR-1-b Rev. 4/99	<h2 style="margin: 0;">SEARCH WARRANT</h2>	Case or Warrant Number
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IN THE _____ Circuit COURT OF _____ Elmore County, ALABAMA
 (Circuit, District, or Municipal) (Name of County or Municipality)

☒ STATE OF ALABAMA
☐ MUNICIPALITY OF _____ v. Daniel L. Platt
 Defendant

TO ANY LAW ENFORCEMENT OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:
 On this day, _____ Corporal Johnny Russell, proved that he (she) has
 (Name)

Probable cause to believe and does believe that (Description of property to be searched for)
SEE ATTACHMENT "A"

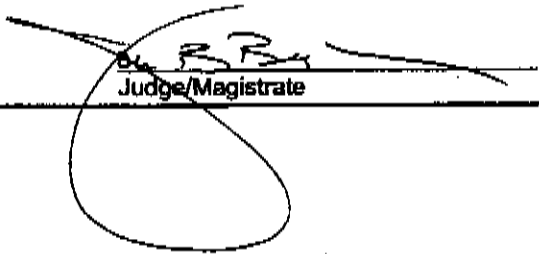
_____ is presently located or concealed in or upon (Description of the person,
 place, premises and/or vehicle to be searched)
the premises located at 16 Wildwood Drive, Deatsville, Alabama 36022, to include the residential dwelling, any outbuildings,
and any computer or computer media

The property (Check applicable ground(s):

- ☐ was, or is expected to be, unlawfully obtained;
- ☐ was, or is expected to be, used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama or a political subdivision thereof, to-wit: _____
- ☐ is, or is expected to be, in the possession of another with intent to use it as a means of committing a criminal offense, or is, or is expected to be, in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery;
- ☒ constituted, or is expected to constitute, evidence of a criminal offense under the laws of the State of Alabama or a political subdivision thereof, to-wit: violation of Title 13A-12-192 of the Code of Alabama

NOW, THEREFORE, by virtue of the authority given to me by Rule 3, Alabama Rules of Criminal Procedure (Ala.R.Crim.P.), you are hereby commanded to make a search of the above-described person or premises ☒ IN THE DAYTIME ☐ AT ANYTIME OF THE DAY OR NIGHT and within 10 days (not to exceed 10 days) in Elmore County, Alabama, for the above-described personal property and to make due return of this Warrant, along with an inventory of any property seized, to the undersigned as required by Rule 3, Ala.R.Crim.P.

ISSUED to _____ Corporal Johnny Russell at 8:40 o'clock A M. on this the 28 day of March, 2006.


 Judge/Magistrate

COPY

ATTACHMENT "A"

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2. **Correspondence pertaining to the possession, receipt or distribution of visual depictions of minors engaged in sexually explicit conduct.**
3. **Visual depictions of minors engaged in sexually explicit conduct in whatever form, including, but not limited to books, magazines, photographs, negatives, films or videocassettes containing such images.**
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 - b. **Solicit minors to engage in sexually explicit conduct for the purposes of producing child pornography;**
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- 12. Any and all records, documents, invoices and materials that concern any Internet accounts.**
- 13. Any and all items described in paragraphs 1-12 above that are stored in the form of magnetic or electronic coding on computer media, or media capable of being read by a computer, with the aid of computer related equipment, including floppy diskettes, CD-ROMs, CD-Rs, CD-RWs, DVDs, fixed hard drives or removable hard disks cartridges, software or memory in any form. The search procedure for electronic data contained in computer operating software or memory devices, where performed on site or in a laboratory, or other controlled environment, may include the following techniques:**
 - a. The seizure of any computer or computer related equipment or data, including floppy diskettes, CD-ROMs, CD-Rs, CD-RWs, DVDs, fixed hard drives or removable hard disk cartridges, software or memory in any form containing material described above, and the removal thereof from the PREMISES for analysis by authorized personnel;**
 - b. Surveying various file "directories" and the individual files they contain (analogous to looking that the outside of a file cabinet for the markings it contains and opening a drawer believed to contain pertinent files);**
 - c. "Opening" or cursorily reading the first few pages of such files in order to determine their precise contents;**

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- d. "Scanning" storage areas to discover and possibly recover recently deleted data;
- e. "Scanning storage areas for deliberately hidden files; or
- f. Performing keyword searches through all electronic storage areas to determine whether occurrences of language contained in such storage areas exist that are intimately related to the subject matter of the investigation. Keywords include words relating to pornography, sex, genitalia, intercourse and topics relating to teen and pre-teen activities.

JURY

State of Alabama Unified Judicial System Form CR-1-c Rev. 2/95	SEARCH WARRANT RETURN AND INVENTORY	Case or Warrant Number
IN THE <u>Circuit</u> COURT OF <u>Elmore County</u> , ALABAMA <small>(Circuit, District, or Municipal) (Name of County or Municipality)</small>		
<input checked="" type="checkbox"/> STATE OF ALABAMA <input type="checkbox"/> MUNICIPALITY OF _____ v. <u>Daniel L. Platt</u> <div style="text-align: right;">Defendant</div>		
RETURN UPON EXECUTION		
I certify that I executed the attached Search Warrant as directed therein by searching the person, place, premises and/or vehicles described therein at <u>9:25</u> o'clock <u>A</u> M. on the <u>29</u> day of <u>MARCH</u> , <u>2006</u> , and (Check One)		
<input type="checkbox"/> did not find or seize any property located thereon or therein. <input checked="" type="checkbox"/> found and seized the following described property:		
<u>DELL INSPIRON 8500</u> <u>LAPTOP Computer</u> <u>SERVICE TAG UNIT T21</u> <u>Express Service Case 2277270361</u> <u>With power cord</u>		
I further certify that a copy of the Search Warrant, along with an endorsed copy of the inventory of property seized, was left with or served upon <u>Daniel L. Platt, 16 Wildwood Dr. Decaturville, AL</u> in accordance with Rule 3, Ala.R.Crim.P.		
<u>Cpl. Johnny Russell</u> Signature of Executing Officer	<u>Millbrook Police Department</u> Agency of Executing Officer	
ACKNOWLEDGMENT OF RETURN		
I, the undersigned Judge/Magistrate, certify that the foregoing return was made to me by <u>Cpl. Johnny Russell</u> on the <u>29</u> day of <u>March</u> , <u>2006</u> . <div style="text-align: right;"> <u>Joseph W. Ward</u> Judge/Magistrate </div>		
ORDER		
The Court hereby directs that this Search Warrant be filed with the Clerk of the _____ Court of _____ as required by Rule 3, Ala.R.Crim.P.		
Date _____	Judge/Magistrate _____	

